

Board. It will be the responsibility of the applicant to notify his/her witnesses and to arrange for their appearance at the time and place set for hearing. Appearance of witnesses will be at no cost to the government.

(e) *Access to records.* (1) It is the responsibility of the applicant to procure such evidence not contained in the official records of the Department of the Navy as he/she desires to present in support of his/her case.

(2) Classified or privileged information may be released to applicants only by proper authorities in accordance with applicable regulations.

(3) Nothing in this part authorizes the furnishing of copies of official records by the Board. Requests for copies of these records should be submitted in accordance with applicable regulations governing the release of information. The BCNR can provide a requestor with information regarding procedures for requesting copies of these records from the appropriate retention agency.

§ 723.5 Hearing.

(a) *Convening of board.* The Board will convene, recess and adjourn at the call of the Chair or Acting Chair.

(b) *Conduct of hearing.* (1) The hearing shall be conducted by the Chair or Acting Chair, and shall be subject to his/her rulings so as to ensure a full and fair hearing. The Board shall not be limited by legal rules of evidence but shall maintain reasonable bounds of competency, relevancy, and materiality.

(2) If the applicant, after being duly notified, indicates to the Board that he/she does not desire to be present or to be represented by counsel at the hearing, the Board will consider the case on the basis of all the material before it, including, but not limited to, the application for correction filed by the applicant, any documentary evidence filed in support of such application, any brief submitted by or in behalf of the applicant, and all available pertinent records.

(3) If the applicant, after being duly notified, indicates to the Board that he/she will be present or be represented by counsel at the hearing, and without good cause and timely notice to the

Board, the applicant or representative fails to appear at the time and place set for the hearing or fails to provide the notice required by § 723.4(b)(2), the Board may consider the case in accordance with the provisions of paragraph (b)(2) of this section, or make such other disposition of the case as is appropriate under the circumstances.

(4) All testimony before the Board shall be given under oath or affirmation. The proceedings of the Board and the testimony given before it will be recorded verbatim.

(c) *Continuance.* The Board may continue a hearing on its own motion. A request for continuance by or in behalf of the applicant may be granted by the Board if a continuance appears necessary to insure a full and fair hearing.

§ 723.6 Action by the Board.

(a) *Deliberations, findings, conclusions, and recommendations.* (1) Only members of the Board and its staff shall be present during the deliberations of the Board.

(2) Whenever, during the course of its review of an application, it appears to the Board's satisfaction that the facts have not been fully and fairly disclosed by the records or by the testimony and other evidence before it, the Board may require the applicant or military authorities to provide such further information as it may consider essential to a complete and impartial determination of the facts and issues.

(3) Following a hearing, or where the Board determines to recommend that the record be corrected without a hearing, the Board will make written findings, conclusions and recommendations. If denial of relief is recommended following a hearing, such written findings and conclusions will include a statement of the grounds for denial as described in § 723.3(e)(4). The name and final vote of each Board member will be recorded. A majority vote of the members present on any matter before the Board will constitute the action of the Board and shall be so recorded.

(4) Where the Board deems it necessary to submit comments or recommendations to the Secretary as to matters arising from but not directly related to the issues of any case, such

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comments and recommendations shall be the subject of separate communication. Additionally, in Military Whistleblower Protection Act cases, any recommendation by the Board to the Secretary that disciplinary or administrative action be taken against any Navy official based on the Board's determination that the official took reprisal action against the applicant will not be made part of the Board's record of proceedings or furnished the applicant but will be transmitted to the Secretary as a separate communication.

(b) *Minority report.* In case of a disagreement between members of the Board a minority report will be submitted, either as to the findings, conclusions or recommendation, including the reasons therefor.

(c) *Record of proceedings.* Following a hearing, or where the Board determines to recommend that the record be corrected without a hearing, a record of proceedings will be prepared. Such record shall indicate whether or not a quorum was present, and the name and vote of each member present. The record shall include the application for relief, a verbatim transcript of any testimony, affidavits, papers and documents considered by the Board, briefs and written arguments, advisory opinions, if any, minority reports, if any, the findings, conclusions and recommendations of the Board, where appropriate, and all other papers, documents, and reports necessary to reflect a true and complete history of the proceedings.

(d) *Withdrawal.* The Board may permit an applicant to withdraw his/her application without prejudice at any time before its record of proceedings is forwarded to the Secretary.

(e) *Delegation of authority to correct certain naval records.* (1) With respect to all petitions for relief properly before it, the Board is authorized to take final corrective action on behalf of the Secretary, unless:

(i) Comments by proper naval authority are inconsistent with the Board's recommendation;

(ii) The Board's recommendation is not unanimous; or

(iii) It is in the category of petitions reserved for decision by the Secretary of the Navy.

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(2) The following categories of petitions for relief are reserved for decision by the Secretary of the Navy:

(i) Petitions involving records previously reviewed or acted upon by the Secretary wherein the operative facts remained substantially the same;

(ii) Petitions by former commissioned officers or midshipmen to change the character of, and/or the reason for, their discharge; or,

(iii) Such other petitions as, in the determination of Office of the Secretary or the Executive Director, warrant Secretarial review.

(3) The Executive Director after ensuring compliance with this section, will announce final decisions on applications decided under this section.

§ 723.7 Action by the Secretary.

(a) *General.* The record of proceedings, except in cases finalized by the Board under the authority delegated in § 723.6(e), and those denied by the Board without a hearing, will be forwarded to the Secretary who will direct such action as he or she determines to be appropriate, which may include the return of the record to the Board for further consideration. Those cases returned for further consideration shall be accompanied by a brief statement setting out the reasons for such action along with any specific instructions. If the Secretary's decision is to deny relief, such decision shall be in writing and, unless he or she expressly adopts in whole or in part the findings, conclusions and recommendations of the Board, or a minority report, shall include a brief statement of the grounds for denial. See § 723.3(e)(4).

(b) *Military Whistleblower Protection Act.* The Secretary will ensure that decisions in cases involving the Military Whistleblower Protection Act are issued 180 days after receipt of the case and will, unless the full relief requested is granted, inform applicants of their right to request review of the decision by the Secretary of Defense. Applicants will also be informed:

(1) Of the name and address of the official to whom the request for review must be submitted.